APPENDIX

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF FLORIDA IN AND FOR DUVAL COUNTY.

NO. 74-4022-CA DIVISION C

JONATHAN W. DIXON,

Plaintiff,

vs.

SEABOARD COAST LINE RAILROAD COMPANY, a corporation,

Defendant.

ORDER ON MOTIONS

This cause came on for hearing on the matters herein disposed of and was argued by counsel for the respective parties.

The chief contention of defendant is that the action should be dismissed under doctrine of "forum non conviens". Although there are several sound reasons for the application of the doctrine, the decisions in Adams vs. Seaboard Coast Line Railroad Company (Fla. App. 1) 244 So.(2d) 797, and Shaw v. Seaboard Coast Line Railroad Company (Fla. App. 1) 229 So.(2d) 275, interdict a judge of this Court from exercising any discretion in the matter.

Accordingly, it is ORDERED AND ADJUDGED that the "Motions of Defendant", filed July 12, 1974, are denied, and it is required to answer the complaint within ten days from date hereof.

DONE AND ORDERED in Chambers at Jacksonville, Florida, this 5th day of September, A.D. 1974.

/s/ John M. McNatt

CIRCUIT JUDGE

cc: Beckham & McAliley
1010 Concord Bldg.
Miami, Florida 33130

George D. Gabel, Jr., Esq.
1014 Barnett Bank Bldg.
Jacksonville, Florida 32202

EXHIBIT "B-1"

[TITLE OMITTED]

NOTICE OF INTERLOCUTORY APPEAL

SEABOARD COAST LINE RAILROAD COMPANY, a corporation, the Defendant in the above-styled cause, takes and enters its interlocutory appeal to the Court of Appeal, First District, State of Florida, to review the order, judgment or decree of the Circuit Court, Fourth Judicial Circuit of Florida, in and for Duval County, Florida, bearing the date the 5th day of September, A.D. 1974, and rendered on the 5th day of September, 1974, by the filing thereof with the Clerk of the above-captioned Court. The nature of the order appealed from is an arder denying this Defendant's Motion to Dismiss under the common law doctrine of Forum Non Conveniens. All parties to said cause are called upon to take notice of this interlocutory appeal.

TOOLE, TAYLOR, MOSELEY,
GABEL & MILTON

By /s/ George D. Gabel, Jr.

GEORGE D. GABEL, JR.
1014 Barnett Bank Building
Jacksonville, Florida 32202
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy hereof has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, Attorneys for Plaintiff, by mail, this 16th day of September, 1974.

/s/ George D. Gabel, Jr.

Attorney

EXHIBIT "B-2"

[TITLE OMITTED]

ASSIGNMENTS OF ERROR

The Defendant, SEABOARD COAST LINE RAILROAD COMPANY, a corporation, assigns as error to be asserted and relied upon by it on its Interlocutory Appeal, simultaneously entered in this cause, the following:

1. The above-styled Court erred in denying Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens by the entry of its Order dated September 5, 1974, and filed with the Clerk of said Court on September 5, 1974.

2. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens constituted an abuse of said Court's judicial discretion, and said Court is thus in error.

3. Having made a judicial determination in its Order of September 5, 1974, that there are several sound reasons for the application of the doctrine of Forum Non Conveniens in this case, the above-styled court erred in refusing to dismiss this action on said grounds; and said Court is thus in error.

4. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens constituted an improper rejection of the established doctrine of Forum Non Conveniens, and said Court is thus in error.

5. The denial by the above-styled Court of the Defendant's Motion to Dismiss under the doctrine of Forum Non Conveniens deprives this Defendant of its constitutional right to "equal protection of the laws", as guaranteed by Sections 1, 4 and 12 of the Declaration of Rights to the Constitution of the State of Florida, and by the Fourteenth Amendment to the Constitution of the United States of America; and said Court is thus in error.

Dated at Jacksonville, Florida this 16th day of September, A.D., 1974.

TOOLE, TAYLOR, MOSELEY,
GABEL & MILTON

By /s/ George D. Gabel, Jr.

GEORGE D. GABEL, JR.
1014 Barnett Bank Building
Jacksonville, Florida 32202
Attorneys for Defendant

I HEREBY CERTIFY that a copy hereof has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, Attorneys for Plaintiff, by mail, this 16th day of September, 1974.

/s/ George D. Gabel, Jr.

Attorney

EXHIBIT "C-1"

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT OF FLORIDA

NO. W-451

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,

Appellant,

vs.

JONATHAN W. DIXON,

Appellee.

MOTION TO QUASH APPEAL AND ALTERNATIVE MOTION TO DISMISS

Appellee, pursuant to Florida Appellate Rule 3.9, moves the Court to enter an Order quashing this appeal on the grounds that it is frivolous or taken only for the purpose of delay.

In support of this motion, appellee would show the Court that the precise point of law raised by appellant has been previously adjudicated by this Court in the following reported decisions:

1. Adams v. S.C.L. RR.,
   224 So.2d 797 (Fla.App.1969);

2. Shaw v. S.C.L. RR.,
229 So.2d 275 (Fla.App.1970); cert.den. 237 So. 2d 540;

3. S.C.L. RR v. Ford,
and
S.C.L. RR. v. Britt,
(consolidated cases) 238 So.2d 473 (Fla.App. 1970);

4. S.C.L. RR v. West,
242 So.2d 156 (Fla.App.1971)

In the alternative, appellee would show that this appeal should be dismissed pursuant to Florida Appellate Rule 4.2(c), which states, with specific regard to interlocutory appeals, that:

> "If it affirmatively appears that the appeal is frivolous, was not taken in good faith, was taken for delay, or is without substantial merit, it will be dismissed and the cost of the proceeding imposed on the appellant."
> (Emphasis added)

In support of this alternative motion, appellee would show that this appeal is "without substantial merit" in that the specific point herein appealed has been already decided in the five above-mentioned prior cases, against this same appellant.

WHEREFORE, appellee moves this Court to quash or, alternatively, dismiss this appeal.

WE CERTIFY that a true copy of the foregoing was mailed this 9 day of October, 1974 to George Gabel, Esq., 1014 Barnett Bank Building, Jacksonville, Florida 32202.

BECKHAM & McALILEY
A Professional Association
1010 Concord Building
66 West Flagler Street
Miami, Florida 33130
Attorneys for appellee

By /s/ R. J. Beckham
R. J. BECKHAM

EXHIBIT "C-2"

[TITLE OMITTED]

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED

Opinion filed November 12, 1974.

An Interlocutory Appeal from the Circuit Court for Duval County. John M. McNatt, Judge.

George D. Gabel, Jr., of Wahl & Gabel, for Appellant.

R. J. Beckham, of Beckham & McAliley, for Appellee.

PER CURIAM.

Interlocutory appeal dismissed. See Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla.App. 1st, 1969); Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla.App. 1st, 1970), cert.den. 237 So.2d 540 (Fla. 1970); Seaboard Coast Line Railroad Co. v. Ford and Britt, 238 So.2d 473 (Fla.App. 1st, 1970); and Seaboard Coast Line Railroad Co. v. West, 242 So.2d 156 (Fla.App. 1st, 1971), cert.den. 246 So.2d 112 (Fla. 1971). We have considered Fowler v. Chillingworth, 94 Fla. 1, 113 So.667 (Fla. 1927) cited by appellant in its reply to appellee's motion.

RAWLS, Chief Judge,

McCORD and JOHNSON, JJ., Concur.

EXHIBIT "D"

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

No. _____

SEABOARD COAST LINE RAILROAD COMPANY,
a corporation,

Petitioner,

-vs-

JONATHAN W. DIXON,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE DISTRICT COURT OF APPEAL,
FIRST DISTRICT

CERTIFICATE OF FILING IN THE DISTRICT COURT OF APPEAL OF PETITION FOR CERTIORARI

Pursuant to Florida Appellate Rule 4.5c(6), Petitioner files herewith in the Florida District Court of

Appeal, First District, a copy of Petition for Certiorari, which it is today forwarding to the Supreme Court of Florida.

WAHL and GABEL

By /s/ George D. Gable, Jr.

GEORGE D. GABEL, JR.
405 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Petitioner

I HEREBY CERTFY that a copy of the foregoing has been furnished to BECKHAM & McALILEY, 1010 Concord Building, Miami, Florida 33130, have filed the original in the District Court of Appeal, First District, and furnished a copy to the Supreme Court of Florida, by mail, this 10th day of December, 1974.

/s/ George D. Gabel, Jr.

[TITLE OMITTED]

PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, FIRST DISTRICT

TO THE SUPREME COURT OF THE STATE OF FLORIDA:

Petitioner, Seaboard Coast Line Railroad Company (sometimes hereinafter called SCL), presents this, its petition for a writ of certiorari and states:

1. Petitioner seeks to have reviewed a decision of the District Court of Appeal, First District, dated the 12th day of November, 1974, and filed in the records of said District Court on the 12th day of November, 1974, in Minute Book 7, Page 342.

2. This petition is presented under the pursuant to Article V, Section 3(b)(3) of the Constitution of the State of Florida, and Rule 4.5c(6), of the Florida Appellate Rules.

3. This petition is accompanied by a conformed copy of the pertinent proceedings, including the decision petitioner seeks to have reviewed, and a supporting brief.

4. The following are the facts of the case:

(a) This is a suit by an employee, Jonathan W. Dixon, (hereinafter sometimes called Dixon) against his employer (SCL) seeking money damages for claimed personal injuries allegedly sustained while in the course and within the scope of his employment. The suit has been

brought under the provisions of the Federal Employers' Liability Act (FELA), Title 45, Section 51 et seq., U.S. Code Annotated.

(b) Respondent Dixon is a nonresident of the State of Florida, and is a resident of the State of Georgia. The alleged accident which is the subject matter of respondent's action occurred outside the State of Florida at Homerville, Georgia. Petitioner SCL is a corporation, organized and existing under and by virtue of the laws of the State of Virginia, with its corporate headquarters and principal corporate officers headquartered and located in Richmond, Virginia. The said accident, if not wholly caused by the negligence of the plaintiff, was caused by the negligence of C. M. Eunice, Jr., trading as Homerville Pole Company in Homerville, Georgia, and since any cause of action by SCL for indemnity against said C. M. Eunice, Jr. did not arise out of any activities of the potential third party defendant in the State of Florida, SCL will be unable to have the third party action disposed of in the present litigation.

(c) Petitioner SCL, the defendant below, filed a motion to dismiss under the doctrine of forum non conveniens, together with a supporting factual affidavit. No other evidence was before the court.

(d) The trial court denied petitioner's motion to dismiss, and in its order, dated September 5, 1974, made the following recital:

> "Although there are several sound reasons for the application of the doctrine, the decisions in Adams v. Seaboard Coast Line Railroad Com-

> pany, (Fla.App.1) 224 So. (2d) 797 and Shaw v. Seaboard Coast Line Railroad Company (Fla. App.1) 229 So. (2d) 275, interdict a judge of this Court from exercising any discretion in the matter."

5. On the foregoing facts the District Court of Appeal, First District, was presented with the following point of law:

> In a case in which both parties to the action are nonresidents and the cause of action sued upon arose in a jurisdiction outside of Florida, did the trial court err in refusing to exercise any discretion in determining whether it should apply the doctrine of forum non conveniens as to this defendant?

On this point of law the District Court of Appeal, First District, rendered the following per curiam decision:

> "Interlocutory appeal dismissed. See Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla.App.1st, 1969); Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla.App.1st, 1970), cert.den. 237 So.2d 540 (Fla., 1970); Seaboard Coast Line Railroad Co. v. Ford and Britt 238 So.2d 473 (Fla.App.1st, 1970); and Seaboard Coast Line Railroad Co. v. West, 242 So.2d 156 (Fla.App.1st, 1971), cert.den. 246 So.2d 112 (Fla., 1971), We have considered Fowler v. Chillingworth, 94 Fla. 1, 113 So.667 (Fla. 1927) cited by appellant in its reply to appellee's motion."

6. The sole point of law involved in this petition concerns the residence of SCL. If SCL is a nonresident of the State of Florida, then it is entitled to seek the benefits of the doctrine of forum non conveniens and to make application to the sound discretion of the trial court in determining whether it should retain jurisdiction of the action or dismiss it without prejudice to the right of the respondent to reinstitute the action in a more appropriate and convenient forum.[1] That principle is stated in Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797 (Fla. 1st D.C.A., 1969,[2] at page 800 where the District Court of Appeal, First District, said as follows:

> "From the foregoing decisions the principle emerges as the recognized law of this state that if a transitory action is filed in a court of Florida between nonresident parties seeking to litigate a cause of action accruing in a foreign jurisdiction, the trial court is accorded a sound discretion in determining whether it should retain jurisdiction of the action or dismiss it without prejudice to the right of the plaintiff to reinstitute the action in a more appropriate and convenient

[1]The trial court never made a determination on "convenience factors" whether the motion to dismiss under the doctrine of forum non conveniens should be granted, although it stated that "there are several sound reasons for the application of the doctrine" in this case. The only holding was that it was divested of any discretionary powers to apply the doctrine because of the decisions in Adams v. Seaboard Coast Line Railroad Co., 224 So.2d 797, (Fla., 1st D.C.A., 1969), and Shaw v. Seaboard Coast Line Railroad Co., 229 So.2d 275 (Fla., 1st D.C.A., 1970).

[2]The District Court of Appeal, First District, in its order dismissing the interlocutory appeal, relies upon the case of Adams v. Seaboard Coast Line Railroad Co. 224 So.2d 797 (Fla., 1st D.C.A., 1969). The other cases cited by the District Court of Appeal in its opinion were subsequently decided on the same basis as the Adams decision.

> forum. . . . In the ultimate, however, it is seen that the application of the doctrine of forum non conveniens is restricted to the limited category of cases in which both parties to the action are nonresidents, and the cause of action sued upon arose in a jurisdiction outside of Florida." [emphasis supplied]

The District Court held, however, that under the facts as presented in the Adams case, supra, SCL, even though a Virginia corporation, is nonetheless a resident of Florida for all practical purposes. The Court said at page 801 as follows:

> "For all intents and practical purposes insofar as proper venue of this action is concerned, defendant occupies the same position as does a Florida citizen or a Florida corporation. It would appear to us that the mere fact that it received its corporate charter from some other state would not alter its position as an operating entity having its official headquarters and principal place of business in Florida."

The District Court's holding in the instant case, based upon the precedent in the Adams case, supra, in which it finds that SCL is a resident of Florida, is a conclusion that is contrary to and is in direct conflict on the same point of law with this Court's decision in Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667 (Fla., 1927).[3]

[3]Petitioner submits that "for all practical purposes" on the record before this Court in this case, the residence of SCL is in Virginia, since the corporate headquarters and principal corporate officers reside in Virginia. Even more importantly, however, the legal residence of the petitioner is in Virginia.

(a) Fowler v. Chillingworth, 94 Fla. 1, 113 So. 667 (Fla., 1927), is the landmark case in Florida dealing with the question of the residence of a corporation. That case is in direct conflict with the decisions relied upon by the District Court of Appeal and is the primary authority upon which this petition is predicated, but in not one of the cases cited by the District Court of Appeal in dismissing the appeal, is the case of Fowler v. Chillingworth, supra, dealt with or even mentioned. In Fowler v. Chillingworth, supra, this Court flatly held that the mere fact that a corporation received its corporate charter from some other state fixes the exclusive residence of that corporation within the state which created it,[4] which clearly shows that the residence of the Seaboard Coast Line Railroad Company is solely in the State of Virginia and that said company, the petitioner herein, is entitled to apply to the trial court to exercise its discretion in the application of the doctrine of forum non conveniens.

(b) Likewise, in Gay v. Bessemer Properties, 159 Fla. 737, 32 So.2d 591 (Fla., 1947), this Court held that a corporation can have no other legal domicile than the state in which it was originally incorporated and has at all times existed as a corporate entity.

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[4]Cf. Adams v. Seaboard Coast Line Railroad Co., supra at page 801, where the District Court said "it would appear to us that the mere fact that (SCL) received its corporate charter from some other state would not alter" the fact that for all practical purposes SCL is a Florida resident. That erroneous conclusion is based upon a factual finding (which in itself is incorrect) that SCL's principal place of business is in Florida. "Principal place of business" is the language used exclusively in establishing jurisdiction in the federal court, based upon diversity of citizenship, codified in Title 28, Section 1332(c), U.S. Code Annotated, and has no relevance in any other context.

(c) Furthermore, in the case of Southern Railway Co. v. McCubbins, 196 So.2d 512 (Fla., 3rd D.C.A., 1967), the District Court of Appeal, Third District, applied the doctrine of forum non conveniens on behalf of the Southern Railway Company, (which is also Virginia corporation). For the Seapoard Coast Line Railroad Company to be in a position where the trial courts in this state are divested of all discretionary powers to apply the doctrine of forum non conveniens to it, denies and deprives SCL of the equal protection of the laws as guaranteed to it by Sections 2, 9 and 21 of the Declaration of Rights to the 1968 Revision of the Constitution of the State of Florida and by the Fourteenth Amendment to the Constitution of the United States.

7. The decision of the District Court of Appeal, First District, which petitioner seeks to have reviewed is in direct conflict with the above-mentioned decisions of this Court and of the District Court of Appeal, Third District. Because of the reasons and authorities set forth in petitioner's brief, it is believed that the decision hereby sought to be reviewed is erroneous and that the conflicting decisions of this Court and of the District Court of Appeal, Third District, are correct and should be approved by this Court as the controlling law for the State of Florida.

WHEREFORE, petitioner requests this Court to grant a writ of certiorari and enter its order quashing the decision and order hereby sought to be reviewed, approving the decisions of this Court and of the District

Court of Appeal, Third District, as the correct decisions, and granting such other and further relief as shall seem right and proper to the Court.

WAHL and GABEL

By /s/ George D. Gabel, Jr.

GEORGE D. GABEL, JR.
405 Florida Title Building
Jacksonville, Florida 32202
Attorneys for Petitioner

JAMES E. WILLIAMS
500 Water Street
Jacksonville, Florida 32202
Of Counsel

EXHIBIT "E"

SUPREME COURT OF FLORIDA
JANUARY TERM. A. D. 1975
WEDNESDAY, JUNE 18, 1975

CASE NO. 45,597
DISTRICT COURT OF APPEAL,
FIRST DISTRICT
W-451

[Filed June 20, 1975]

SEABOARD COAST LINE RAILROAD CO.,
Petitioner,

vs.

JONATHAN DIXON,
Respondent.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5c(6), and it appearing to the Court that it is without jurisdiction it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C.J., ROBERTS, BOYD, OVERTON, and ENGLAND, JJ., concur

A True Copy

W

CC: Hon. Raymond E. Rhodes, Clerk
Hon. S. Morgan Slaughter, Clerk
Hon. John M. McNatt, Judge

George D. Gabel, Jr., Esquire
James E. Williams, Esquire
R. J. Beckham, Esquire

TEST:

Sid J. White
Clerk Supreme Court

By: /s/ Judy Whittle

Deputy Clerk

EXHIBIT "F"

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1975
THURSDAY, SEPTEMBER 25, 1975

I, SID J. WHITE, Clerk of the Supreme Court of Florida do hereby certify that a Petition for Writ of Certiorari in the case of Seaboard Coast Line Railroad vs. Jonathan W. Dixon, Case No. 45,597, was filed in the Supreme Court of Florida on December 12, 1974 and said Petition for Writ of Certiorari was denied on June 18, 1975 by this Court.

IN WITNESS WHEREOF I have hereunto set my hand and official Seal of the Supreme Court of Florida, at Tallahassee, the Capital, this the 25th day of September, 1975.

/s/ Sid J. White

Clerk of the Supreme
Court of Florida